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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,458

03/19/2004

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10/20/2008

EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

10/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/804,458	Applicant(s) WOOD ET AL.	
	Examiner J. Gregory Pickett	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-4 are pending in the application. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Oath/Declaration

2. The Office is hereby *sua sponte* waiving the express language requirement of 37 CFR 1.63(b)(3), where the oath or declaration was filed prior to 01 June 2008. The express language of 37 CFR 1.63(b)(3) is waived only to the extent necessary such that an oath or declaration containing the “material to examination” or “in accordance with § 1.56(a)” language, or both, will be accepted as acknowledging the applicant’s duty to disclose information “material to patentability” as defined in 37 CFR 1.56. Applicants are advised that, notwithstanding the preceding waiver, an applicant who has not disclosed information that is material to patentability as defined in 37 CFR 1.56, because it was believed that the information was not “material to the examination,” should disclose such information in order to discharge the applicant’s duty of disclosure as required by 37 CFR 1.56, and should file a supplemental oath or declaration acknowledging that duty of disclosure.

Claim Rejections - 35 USC § 103

3. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bennett** (US 2003/0106819 A1; available under 35 USC 102(e); previously provided) in view of **Jones et al** (US 6,256,922; previously provided).

Claim 1: Bennett discloses a long gun case in Figure 4. As Bennett specifically states like numerals indicate like elements (paragraph [0011]), the notations of Figures 1-3 will be used to denote the features of Figure 4. Accordingly, Bennett discloses an outer shell 26, a padded inner liner 28. Although Figure 3 shows the film 26 on the exterior surface, paragraph [0011] specifically states that the padding 28 is located on the inner surface. Bennett is formed by folding over a sheet and sewing the edges closed. Bennett uses a double stitching and may be considered "reinforced" around a peripheral seam. Bennett discloses an end opening and first fold-over flap 14 movable to close the end opening. Bennett discloses all limitations claimed by the applicant except for the fabric outer shell and the sidelong access opening.

Jones is in applicant's field of endeavor and teaches a fabric material (see Col. 4: 30-33). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the outer shell of Bennett in a fabric material in order to have a sturdy, lightweight casing. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. One of ordinary skill in the art would have reasonably expected success since the layers of Bennett are connected by adhesive (paragraph [0012]), which is fully capable of operating with a fabric.

Further, Jones teaches a sidelong opening covered by a flap (see Figure 1, portions denoted by numbers 100, 200, 50, 60, 90. See also Figure 7). Jones teaches this opening for access to such features as the shell insertion portion or magazine

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insertion portion (see e.g. Col. 2: 43-48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the case of Bennett with sidelong openings and fold-over flaps at the rear and mid portion of the case in order to have access to the rifle butt, shell insertion portions, or magazine insertion portions. The flaps of Jones are of unitary construction with the casing and therefore would be considered continuous (Figure 7). Access to the butt would be desirable since rifles sometimes have special features on the butt portion (e.g. a compass or compartment). One of ordinary skill in the art would have reasonably expected success since both cases are made in a similar manner.

Once modified with a sidelong opening at the rear and mid portions, Bennett-Jones would have a conjoined sidelong and end access opening and be fully capable of being turned inside-out. Turning the item inside-out is considered an intended use.

Claim 2: Both Bennett and Jones disclose closure flaps attached by hook-and-loop fasteners (Bennett 22 and Jones 160).

Claim 3: Jones is evidence that a woven fabric was known in the art (see Col. 4: 30-33). To replace the non-woven liner of Bennett with a woven liner would have been obvious to one of ordinary skill, based upon the desired strength of the liner. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Further, Bennett discloses liner 28 impregnated with rust inhibitors (paragraph [0016]) and it would have been obvious to include this feature in the combination in order to protect the retained firearm from rusting.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett-Jones as applied to claim 1 above, and further in view of Broun et al (US 5,431,970; previously provided).

Bennett-Jones, as applied to claim 1 above, discloses the claimed invention except for the middle layer of padding.

Broun is in applicant's field of endeavor and teaches a tri-layer protective material for gun cases (e.g. Figure 3), where the middle layer 14 is made of foam (i.e. padding) to protect against impact and abrasion. The padding also provides for flotation (Col. 4: 49-53). To modify the case of Bennett-Jones with an additional middle layer as taught by Broun would have been obvious to one of ordinary skill in the art for the purpose of additional impact resistance and/or flotation.

Response to Arguments

5. Applicant's arguments filed 7 July 2008 have been fully considered but they are not persuasive.

It is immaterial whether the reference discloses the material as "padding" since material is capable of functioning as padding based upon its material properties. The prior art is not required to use the same terminology as that of the applicant.

The flaps of Jones are of unitary construction with the casing and therefore would be considered continuous (Figure 7). The flaps may have multiple indentations for

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various components; however this does not detract from the continuous nature of the flap (Figure 7).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Gregory Pickett/
Primary Examiner, Art Unit 3728